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Exhausted Yet? *Stephens v. Pension Benefit Guaranty Corporation* and the Application of the Exhaustion Doctrine to Statute-Based ERISA Claims

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EXHAUSTED YET? *STEPHENS V. PENSION BENEFIT
GUARANTY CORPORATION* AND THE APPLICATION
OF THE EXHAUSTION DOCTRINE TO STATUTE-
BASED ERISA CLAIMS

Carson D. Phillips-Spotts

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*Carson D. Phillips-Spotts**

I. INTRODUCTION

By 1974, the U.S. Congress recognized that employer-provided retirement pension plans had “become an important factor affecting the stabilization of employment and the successful development of industrial relations”¹ and enacted the Employee Retirement Income Security Act (ERISA) with the aim of protecting “the interests of participants in employee benefit plans and their beneficiaries.”² In enacting ERISA, Congress established “standards of conduct, responsibility, and obligation[s] for fiduciaries of employee benefit plans” and provided for “appropriate remedies, sanctions and ready access to the Federal courts.”³ Apart from creating federal causes of action to ensure efficient and equitable administration of private pension plans, Congress also mandated that pension plan providers establish certain administrative procedures through which beneficiaries may seek redress in the event of conflict. The dual and, at times, conflicting aims of providing plan participants access to federal courts while simultaneously attempting to strengthen internal remedies made available by the providers have created significant debate in federal courts. On the one hand, some federal courts, focusing their analyses on Congress’ intention that pension plan providers create and develop internal procedures through which aggrieved participants may seek relief, have held that the exhaustion of these internal remedies by employees is a prerequisite to bringing a federal court claim under ERISA.⁴ On the other hand, the majority of federal circuit courts have held that Congress’ explicit intent to provide pension plan participants a form of relief under federal law does not require that they first exhaust all internal administrative remedies provided to them by plan

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1. Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, § 2(a), 88 Stat 829, 832 (1974) (codified at 29 U.S.C. § 1001).

2. *Id.* at § 2(b), 88 Stat. 829, 833.

3. *Id.*

4. *See, e.g.*, *Lindemann v. Mobil Oil Corp.*, 79 F.3d 647, 649-50 (7th Cir. 1996); *Mason v. Cont’l Grp.*, 763 F.2d 1219, 1226-27 (11th Cir. 1985); *Kross v. W. Elec. Co.*, 701 F.2d 1238, 1245 (7th Cir. 1983).

providers before bringing an ERISA claim.⁵ These two competing viewpoints have created a split among the federal circuits, and *Stephens v. Pension Benefit Guaranty Corp.*⁶ is a recent case that considered the exhaustion doctrine and further deepened the rift among the courts.

Although the ERISA statute itself does not require a plaintiff to exhaust all remedies at her disposal before bringing a claim, the federal courts have universally been understood to have the power to require exhaustion of such remedies as a matter of discretion.⁷ Under the framework of the exhaustion doctrine, federal courts may dismiss claims over which they would normally have jurisdiction if a plaintiff fails to first exhaust the internal remedies available to her before bringing suit.⁸ The rationale behind the application of the doctrine in the context of ERISA claims is based principally on the assumption that Congress intended plan participants to utilize the internal administrative remedies mandated by the statute; and by ensuring that the internal remedies were utilized, the ERISA statutory scheme would be better executed.⁹ Although it is unquestioned that federal courts may apply the exhaustion doctrine at their discretion, there is much debate about the doctrine's reach, especially as it pertains to statutory claims arising under ERISA. The debate at its core involves broader, competing notions of the interpretation of Congressional intent, institutional competence, and the role of private dispute resolution vehicles within the federal statutory scheme. Both sides of the circuit split have invoked and developed compelling arguments to support their positions, and the *Stephens* court weighs these competing interests in arriving at its holding¹⁰

The aims of this Note are twofold: the first objective is to review and analyze the state of the jurisprudence regarding the application of the exhaustion doctrine to claims arising under ERISA. The second objective of this Note is to predict how the First Circuit and the Supreme Court would likely handle the issue of the application of the exhaustion doctrine to these claims. These objectives are achieved over the Note's succeeding three parts. Part II provides a summation of the factual and procedural backgrounds leading up to *Stephens* and an analysis of the court's holding. Part III examines the rationales driving the prevailing

5. See, e.g., *Smith v. Sydnor*, 184 F.3d 356, 364-65 (4th Cir. 1999); *Held v. Mfrs. Hanover Leasing Corp.*, 912 F.2d 1197, 1204-05 (10th Cir. 1990); *Zipf v. Am. Tel. and Tel. Co.*, 799 F.2d 889, 891-94 (3d Cir. 1986); *Amaro v. Cont'l Can Co.*, 724 F.2d 747, 751-52 (9th Cir. 1984).

6. 755 F.3d 959 (D.C. Cir. 2014).

7. *Id.* at 964.

8. See, e.g., *King v. James River-Pepperell, Inc.*, 592 F. Supp. 54, 56 (D. Mass. 1984) (holding that the plaintiff's federal action was barred by her failure to comply with the reinstatement procedure provided by the collective bargaining agreement); *Delisi v. United Parcel Service, Inc.*, 580 F. Supp. 1572, 1574 (W.D. Pa. 1984) (dismissing the plaintiff's ERISA claims on the grounds that he did not first comply with the claims appeals process provided by the plan before bringing suit in the federal courts).

9. See *Amato v. Bernard*, 618 F.2d 559, 567 (9th Cir. 1980) (noting that "the institution of such administrative claim-resolution procedures was apparently intended by Congress to help reduce the number of frivolous lawsuits under ERISA; to promote the consistent treatment of claims for benefits; [and] to provide a nonadversarial method of claims settlement; . . . It would certainly be anomalous if the same good reasons that presumably led Congress and the Secretary to require covered plans to provide administrative remedies for aggrieved claimants did not lead the courts to see that those remedies are regularly used.").

10. *Stephens v. Pension Benefit Guar. Corp.*, 755 F.3d 959, 968 (D.C. Cir. 2014).

arguments in both the majority and minority circuits. Finally, Part IV provides a prospective outlook and explains how, based on established jurisprudence and in light of the *Stephens* decision, the First Circuit and the Supreme Court would likely side with the majority of the circuits and hold that the doctrine does not apply to claims invoking substantive rights protected by the statute.

II. *STEPHENS V. PENSION BENEFIT GUARANTY CORPORATION*

A. *Procedural and Factual Background*

In 1996, the plaintiff, James Stephens, retired from his position as a U.S. Airways pilot.¹¹ As a retiring U.S. Airways employee and a participant in the U.S. Airways retirement pension plan, Stephens was entitled to retirement benefits in the form of a lump sum to be paid out on a certain date after the commencement of his retirement.¹² Mr. Stephens's lump sum benefits, however, were actually paid out approximately forty-five days after the date of payment fixed by the pension plan.¹³ As a result of the delayed payment, Stephens filed an administrative claim with U.S. Airways seeking to recover the sum of \$3,665.06, an amount representative of the interest that accrued on the lump sum payment during the forty-five day delay.¹⁴ In bringing his administrative claim, Stephens asserted that the delayed payment violated both the terms of the U.S. Airways pension plan and ERISA, which requires that "any lump sum benefit be the 'actuarial equivalent' of the annuity benefit."¹⁵ U.S. Airways denied Mr. Stephens's claim and he appealed to the U.S. Airways Retirement Board, where his appeal was also denied.¹⁶ Subsequent to the Retirement Board's denial of Mr. Stephens's claim, he filed a complaint against U.S. Airways and the retirement plan administrators in the U.S. District Court for the Northern District of Ohio alleging six different causes of action under ERISA.¹⁷

The district court dismissed the claim for lack of subject matter jurisdiction but the Sixth Circuit reversed and remanded.¹⁸ Subsequent to the reversal, the U.S. Airways pension plan dissolved as a result of the U.S. Airways bankruptcy, and the Pension Benefit Guaranty Corporation (PBGC), a federal agency, was substituted as the defendant and trustee of the pension plan.¹⁹ Accordingly, the case was transferred to the U.S. District Court for the District of Columbia,²⁰ and in 2008 the

11. *Stephens*, 755 F.3d at 962.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* (quoting Employee Retirement Income Security Act (ERISA) 29 U.S.C. § 1054(c)(3) (1994)).

16. *Id.*

17. *Stephens v. Ret. Income Plan for Pilots of U.S. Air, Inc.*, 464 F.3d 606, 607 (6th Cir. 2006).

18. *Id.* at 614-15 (reversing the on the grounds that the District Court erred in attempting to evaluate the merits of the substantive claim instead of conducting an analysis pertinent to determining whether the court had jurisdiction to hear the matter).

19. *Stephens*, 755 F.3d at 962.

20. *Stephens v. United Airways Grp., Inc.*, No. 4:00-CV-144, 2007 U.S. Dist. LEXIS 98665, at *6 (N.D. Ohio 2007).

district court granted summary judgment in PBGC's favor.²¹ Stephens appealed, and a panel of the D.C. Court of Appeals affirmed in part,²² and reversed and remanded to determine the proper amount due to Stephens for "unreasonable" delays in payment under the plan.²³

On remand, Stephens sought to certify a class of similarly situated pilots who had also received delayed payments under the U.S. Airways retirement plan.²⁴ The district court denied Stephens's motion to form a class, holding that Stephens was the only plaintiff out of the proposed class of 650 who had exhausted all of the internal administrative remedies provided by the retirement plan before filing suit.²⁵ The district court noted that because Stephens had exhausted all internal administrative remedies available to him under the plan, he was not "typical" of the class, and rejected his argument that the exhaustion of administrative remedies was a non-factor because it was not required for claims seeking to enforce statutorily-based guarantees under ERISA.²⁶ The district court based its decision to deny the formation of the class on a possible affirmative defense available to PBGC rooted in the exhaustion doctrine, stating that "Stephens's case is in a drastically different posture from the cases of other putative plaintiffs as to a potentially dispositive affirmative defense asserted by PBGC."²⁷ The court thus held that because PBGC would potentially be able to invoke the exhaustion doctrine as an affirmative defense as to the claims of Stephens's peers, but not as to Stephens's claim, class certification was not appropriate.²⁸ After the district court denied Stephens's motion to create a class, he settled his personal claim with PBGC out of court so as to obtain a final appealable judgment.²⁹ Stephens subsequently appealed, claiming that the district court erred in not certifying the class on the grounds that his and his colleagues' ERISA claims were purely statutory and were thus not subject to the application of the exhaustion doctrine.³⁰

B. Stephens and the Application of the Exhaustion Doctrine

On appeal to the Court of Appeals for the District of Columbia, the central issue before the court was whether or not the class members seeking to join Stephens in his ERISA claim had to have first exhausted all internal remedies

21. *Stephens v. US Airways Grp.*, 555 F. Supp.2d 112, 123-24 (D.D.C. 2008) (denying PBGC's motion to dismiss and granting plaintiffs' motion to certify a class on the grounds that "a plan participant must exhaust administrative remedies prior to bringing suit in a federal court.").

22. *Stephens v. US Airways Grp., Inc.*, 644 F.3d 437, 442 (D.C. Cir. 2011) (affirming the district court's denial of the payment of attorney's fees).

23. *Id.*

24. *Stephens v. US Airways Grp., Inc.*, 908 F. Supp.2d 10, 11 (D.D.C. 2012).

25. *Id.* at 18.

26. *Id.* at 14. The court classified the plaintiffs' claims to be contractual and not statute-based, concluding that "[b]ecause the issue now before the Court poses a question of plan administration and not a question of statutory interpretation or application, the common application of prelitigation exhaustion applies to all plaintiffs." *Id.* at 16.

27. *Id.* at 14.

28. *Id.* at 18.

29. *Stephens v. Pension Benefit Guar. Corp.*, 755 F.3d 959, 964 (D.C. Cir. 2014).

30. *Id.* at 964.

before qualifying for class status.³¹ The court began its analysis by recognizing that the application of the exhaustion doctrine is a matter of judicial discretion and is not explicitly required by the ERISA statute.³² The court then explored the exhaustion doctrine's aims of effectuating "Congress's purpose in requiring that benefit plans provide for administrative review procedures by ensuring those internal remedial procedures are utilized."³³ The court also noted that the doctrine "enables plan administrators to apply their expertise and exercise their discretion to . . . make considered interpretations of plan provisions, and assemble a factual record that will assist the court in reviewing the administrators' actions."³⁴

After reviewing the doctrine's aims and benefits, the court next analyzed the rationales for the countervailing proposition that the doctrine should not be applied to statutory claims arising under ERISA because "Congress intended that a body of Federal substantive law w[ould] be developed by the courts to deal with issues involving the rights and obligations under private welfare and pension plans."³⁵ The court recognized that the two views on the application of the doctrine created a split among the federal circuits, and ultimately sided with the majority of the circuits in holding that "pension plan beneficiaries need not exhaust internal remedial procedures before proceeding to federal court when they assert violations of ERISA's substantive guarantees."³⁶ The court thus concluded that because the plaintiffs' claims regarding delayed payment of retirement benefits invoked inherently substantive rights under ERISA, and did not require contractual interpretation under the benefit plan, the exhaustion doctrine did not apply.³⁷

With its decision, the Court of Appeals for the D.C. Circuit became the sixth federal circuit to explicitly hold that the exhaustion doctrine did not apply to claims involving substantive guarantees under ERISA.³⁸ The court carefully weighed arguments both in favor³⁹ and against⁴⁰ applying the doctrine and held that Congress' intent would be better served by not requiring exhaustion of internal remedies in cases that involve the benefits under, and interpretation of the ERISA

31. *Id.*

32. *Id.* at 964 (stating that "[a]lthough ERISA itself does not require a plan beneficiary to exhaust internal plan remedies before bringing suit, courts have universally applied the requirement as a matter of judicial discretion.").

33. *Id.*

34. *Id.* (quoting *Comme'ns Workers of Am. v. Am. Tel. and Tel. Co.*, 40 F.3d 426, 432 (D.C. Cir. 1994)).

35. *Id.* (quoting *Amato v. Bernard*, 618 F.2d 559, 567 (9th Cir. 1980)) (alteration in original).

36. *Id.* at 966 (stating that "[t]his balancing compels us to require claimants to exhaust internal remedies when they assert rights guaranteed by a benefit plan. But it logically suggests direct resort to the federal courts where claimants assert statutory rights—a practice that better promotes Congress's intent to create minimum terms and conditions for payment plans.").

37. *Id.*

38. *Id.* (noting that in holding that the doctrine did not apply to statute-based claims that the D.C. Circuit was in agreement with "the Third, Fourth, Fifth, Ninth and Tenth Circuits.").

39. *Id.* (stating that "we are called upon to balance . . . competing interests recognized by ERISA," and that on the one hand, "Congress intended that plan administrators have primary responsibility in adjudicating benefits claims to promote the consistent treatment of claims and to minimize the burden on the courts and on all parties.").

40. *Id.* (stating that on the other hand, "Congress intended for the courts to develop a body of federal substantive law that would address issues involving rights and obligations under pension plans.").

statute. In order to understand fully the state of the law regarding the exhaustion doctrine and the current circuit split, it is helpful to analyze the doctrine in its differing applications among the circuits.

III. THE CIRCUIT SPLIT

A. *The Majority View*

As mentioned previously, the majority of the federal circuits have held that exhaustion is not required when a plaintiff asserts a statutory claim under ERISA.⁴¹ The Seventh and the Eleventh Circuits, however, have held that the exhaustion requirement applies to both claims asserting statutory guarantees under ERISA as well as conflicts arising under plan contracts.⁴² In analyzing the two competing theories pertaining to the applicability of the exhaustion doctrine, we turn first to the majority view, which distinguishes claims arising from a possible breach of a plan contract from those arising under the ERISA statute, and holds that the exhaustion doctrine does not apply to the latter. *Barrowclough v. Kidder, Peabody & Co.*⁴³ and *Zipf v. American Telephone & Telegraph Co.*⁴⁴ are two seminal cases decided by the Third Circuit that effectively present the rationale of the majority view, and clarify the court's reasoning in *Stephens*.

In *Barrowclough*, the plaintiff, an investment banker, had his employment terminated after it was alleged that he mishandled various customer accounts.⁴⁵ While employed, the plaintiff participated in a deferred compensation plan, the terms of which would allow him to set aside in an account a portion of his pre-tax salary and collect the accrued amount when he ceased to be an employee of the

41. See, e.g., *Smith v. Sydnor*, 184 F.3d 356, 364-65 (4th Cir. 1999) (holding that exhaustion of administrative remedies is not required for plaintiffs bringing a breach of fiduciary duty claim under ERISA); *Held v. Mfrs. Hanover Leasing Corp.*, 912 F.2d 1197, 1204-05 (10th Cir. 1990); *Zipf v. Am. Tel. and Tel. Co.*, 799 F.2d 889, 891-94 (3d Cir. 1986); *Amaro v. Cont'l Can Co.*, 724 F.2d 747, 751-52 (9th Cir. 1984) (concluding that exhaustion of administrative remedies is not required to bring suit under ERISA on the grounds that the statute creates certain non-waivable rights that are best protected by the judiciary).

42. See, e.g., *Lindemann v. Mobil Oil Corp.*, 79 F.3d 647, 649-51 (7th Cir. 1996) (upholding the summary judgment grant against the plaintiff for her failure to exhaust all internal administrative remedies noting that "Congress' apparent intent in mandating internal claims procedures found in ERISA was to minimize the number of frivolous lawsuits, promote a non-adversarial dispute resolution process, and decrease the time and cost of claims settlement."); *Mason v. Cont'l Grp., Inc.*, 763 F.2d 1219, 1226-27 (11th Cir. 1985) (noting that "[c]ompelling considerations exist for plaintiffs to exhaust administrative remedies prior to instituting a lawsuit."); *Kross v. W. Elec. Co.*, 701 F.2d 1238, 1245 (7th Cir. 1983) (holding that the trial court did not abuse its discretion in requiring the exhaustion of internal administrative remedies for an ERISA claim on the grounds that "well-established federal policy, and supporting case law, that [favors requiring] exhaustion of administrative remedies prior to bringing an ERISA-based lawsuit in federal court.").

43. 752 F.2d 923 (3d Cir. 1985).

44. *Zipf v. Am. Tel. and Tel.*, 799 F.2d 889 (3d Cir. 1984).

45. *Barrowclough v. Kidder, Peabody & Co.*, 752 F.2d at 927 ("[The defendants claim] that [the plaintiff] mishandled customer accounts, and the company was obliged to recredit the losses to two customers' accounts. On November 1, 1982, before his termination, [the plaintiff] signed an agreement to pay approximately \$165,000 that was being credited to those customers.").

firm.⁴⁶ Upon the termination of the plaintiff's employment, he made various attempts to collect funds owed to him under the deferred compensation plan, only to have his requests denied on his former employer's assertion that any amounts he accrued under the plan had been offset by the payment of claims relating to his alleged mishandling of customer accounts.⁴⁷ The plaintiff then sought redress in the federal courts, filing a complaint containing nineteen counts—four of which were under ERISA.⁴⁸ Count One of the complaint sought to enforce payment under the terms of the plan pursuant to ERISA's civil enforcement provision.⁴⁹ Count Two alleged a failure to provide an accounting, a requirement established by ERISA.⁵⁰ In addressing the plaintiff's ERISA-based claims, the defendant firm argued that the federal courts did not have jurisdiction over the claims because the plaintiff had formerly signed an agreement to submit to arbitration any conflicts "arising out of [his] employment."⁵¹

The court was thus charged with the task of interpreting the ERISA provision in a manner that would balance the plaintiff's right to access the federal courts to litigate claims, with a strong congressional sentiment to promote private arbitration.⁵² In balancing the two competing interests, the *Barrowclough* court made a very important distinction between claims arising from a right created by ERISA, and claims based purely on contractual rights under a pension plan.⁵³ The court, relying upon ERISA's legislative history and the interpretation of similar federal statutes, held that "claims to establish or enforce rights to benefits under [ERISA] that are independent of claims based on violations of the substantive provisions of ERISA are subject to arbitration, while claims of statutory violations can be brought in a federal court notwithstanding an agreement to arbitrate."⁵⁴ The court thus held that the plaintiff's claim to enforce the terms of the pension plan was subject to arbitration as a claim independent of ERISA's substantive guarantees, while his claim for failure to provide accounting was a statutory issue that fell within the jurisdiction of the federal courts.⁵⁵

In marking the distinction between substantive claims under ERISA and those relating to the enforcement of plan provisions, the court reasoned that "[t]here is an inherent incapability in referring to an arbitrator claims that fall within the

46. *Id.* at 926-27.

47. *Id.*

48. *Id.*

49. *Id.* at 935. The Civil Enforcement provision of ERISA states, in relevant part, that a "civil action may be brought by a participant or beneficiary to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan" Employment Retirement Income Security Act (ERISA) of 1974, 29 U.S.C. § 1132(a) (1982).

50. *Barrowclough*, 752 F.2d at 927.

51. *Id.* at 937.

52. *Id.* at 939 (stating that "we must now accommodate [ERISA's] policy of providing federal court access and federal law remedies to pension claimants and their beneficiaries with the federal policy favoring enforcement of arbitral agreements").

53. *Id.* at 939-40 (stating that while "Congress intended that contractually-based pension claims would remain subject to arbitral resolution . . . [the plaintiff's] claim for damages under [ERISA] . . . presents a pure statutory issue . . . [t]hat . . . is within the exclusive jurisdiction of federal courts.").

54. *Id.* (citations omitted).

55. *Id.* at 940.

exclusive jurisdiction of the federal courts and that arise as part of a comprehensive statutory scheme designed to assure protection to those individuals who fall within it.”⁵⁶ In analyzing ERISA’s legislative history, the court noted that the statute created substantive guarantees, and that Congress intended that those guarantees would be protected by the federal court system, and not by arbitrators.⁵⁷ Thus, the court concluded, Congress’ “intent would be frustrated if arbitrators, who are not bound to consider law or precedent in their decisions, and who decide issues primarily on contractual grounds, had a conclusive role in deciding such claims.”⁵⁸

The *Barrowclough* Court took significant steps in defining the scope of ERISA by noting a distinction between substantive rights created by the statute, and those that are guaranteed solely under the terms of the pension plan. The court thus created a dichotomy between claims invoking ERISA substantive guarantees, and those brought to enforce the terms of a particular plan, with the former falling within the exclusive domain of the federal courts. In *Zipf v. American Telephone & Telegraph Co.*,⁵⁹ decided one year after *Barrowclough*, the Third Circuit applied the distinction enumerated in *Barrowclough* to a case involving a mixed question of substantive and plan-based rights.⁶⁰

In *Zipf*, the plaintiff, an employee of the defendant company, brought an ERISA claim after her employment was terminated while she was out of work on medical leave.⁶¹ The plaintiff was informed that her employment was being terminated during the seventh day of her leave and she claimed that the defendant company terminated her employment because she would have been entitled to significant benefits under the company-provided disability benefits plan on the eighth day of her absence.⁶² The plaintiff argued that she was entitled to relief as a result of the company’s interference with both her statutory rights under ERISA, and her rights guaranteed by the plan.⁶³ The defendant company moved for summary judgment, asserting that because the plaintiff had not exhausted all internal remedies available to her under the plan before bringing her federal court claim, it was entitled to judgment as a matter of law.⁶⁴ The district court found that the exhaustion doctrine did apply to the plaintiff’s claim and granted summary judgment in favor of the defendant.⁶⁵

On appeal, the Third Circuit Court of Appeals applied the framework established in *Barrowclough*⁶⁶ and conducted an analysis as to whether the

56. *Id.*

57. *Id.* at 940-941 (stating that “Congress further sought ‘to protect . . . the interests of the participants and beneficiaries . . . by providing for appropriate remedies, sanctions, and ready access to Federal courts.’”) (quoting 29 U.S.C. § 1001(b) (1982)).

58. *Id.* at 941.

59. *Zipf v. Am. Tel. and Tel. Co.*, 799 F.2d 889 (3d Cir. 1986).

60. *Id.*

61. *Id.* at 890.

62. *Id.*

63. *Id.*

64. *Id.* As in effect at the time, the relevant portion of ERISA stated that it is unlawful “for any person to discharge . . . or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan” Employment Retirement Income Security Act (ERISA) of 1974, 29 U.S.C. § 1140 (1982).

65. *Id.* at 890.

66. 752 F.2d 923 (3d Cir. 1985).

plaintiff's claim invoked substantive rights grounded in ERISA, or whether her claim involved contractual rights under the plan.⁶⁷ The court, in determining whether the plaintiff's claim invoked statute-based protections under ERISA, looked to Congress' intent in enacting the provision.⁶⁸ The court acknowledged that the statute created a substantive right, noting that "Congress enacted this section to prevent unscrupulous employers from discharging or harassing their employees in order to prevent them from obtaining their statutory or plan-based rights."⁶⁹ The court also noted that the plaintiff made "no claim for benefits [under the plan] and concede[d] that she was not entitled to disability payments."⁷⁰

After finding that the plaintiff's claim invoked a purely statutory right created by Congress, the court viewed the claim in light of the rationales behind the exhaustion doctrine.⁷¹ In conducting this analysis, the court recognized that the doctrine:

[E]nsures that the appeals procedures mandated by Congress will be employed, permits officials of benefit plans to meet the responsibilities properly entrusted to them, encourages the consistent treatment of claims for benefits, minimizes the costs and the delays of claim settlement in a nonadversarial setting, and creates a record of the plan's rationales for denial of the claim.⁷²

In applying the rationale behind the exhaustion doctrine to the plaintiff's claim, the court found that the benefits provided by the doctrine did not apply to claims asserting statutory guarantees, noting that such a claim "asserts a statutory right which plan fiduciaries have no expertise in interpreting."⁷³ Further, the court held that "statutory interpretation is not only the obligation of the courts, it is a matter within their peculiar expertise," and noted that "there is a strong interest in judicial resolution of these claims, for the purpose of providing a consistent source of law to help plan fiduciaries and participants predict the legality of proposed actions."⁷⁴ The court thus held that plaintiffs asserting a violation of a statutory benefit under ERISA need not exhaust internal remedies before filing a federal court claim.⁷⁵

In holding that the exhaustion doctrine does not apply to ERISA claims involving statutory issues, the court in *Zipf* first looked to the nature of the claim to determine if the rights asserted by the plaintiff were grounded in ERISA or if they arose from the administration of the plan itself.⁷⁶ Once the court determined that

67. *Zipf*, 799 F.2d at 892 (stating that "[w]hen a plan participant claims that he or she has been unjustly denied benefits, it is appropriate to require participants first to address their complaints to the fiduciaries to whom Congress, in Section 503, assigned the primary responsibility for evaluating claims for benefits.").

68. *Id.* at 891-92.

69. *Id.* at 891.

70. *Id.* at 893.

71. *Id.* at 892.

72. *Id.*

73. *Id.* at 893.

74. *Id.* (citation omitted).

75. *Id.* (holding that "an employee with a claim under Section 510 of ERISA need not submit that claim to the plan before seeking relief in a federal district court.").

76. *Id.* at 891 (finding that the plaintiff's claims are "premised on Section 502(a)(3) . . . and are brought not to enforce the terms of the plan, but to assert rights granted by the federal statute.").

the claim involved substantive statutory rights, it applied the rationale of the exhaustion doctrine to the nature of the claim asserted and found that applying the doctrine in such cases would effectively circumvent Congress' intent to allow courts to interpret federal statutes and would hinder the interest of creating a body of federal common law interpreting the various rights and duties under ERISA.⁷⁷

In contrast to the approach taken by the *Barrowclough* and *Zipf* courts, the minority circuits have applied the exhaustion doctrine to all ERISA claims irrespective of their character.

B. The Minority View

When confronted with the question of whether the exhaustion doctrine applies in cases in which plaintiffs allege violations of their substantive rights guaranteed under ERISA, the Seventh and Eleventh Circuits have arrived at the opposite conclusion of the majority circuits, and have held that the doctrine does apply in such cases.⁷⁸ *Kross v. Western Electric Co.*⁷⁹ is a Seventh Circuit case with a similar procedural posture and factual background as the previously discussed *Zipf* case, but differs from *Zipf* in that the court chose to apply the exhaustion doctrine to a claim arising under the statute.⁸⁰

In *Kross*, the plaintiff, a former employee of the defendant company, filed a complaint alleging that the company terminated his employment for the sole purposes of avoiding having to pay the plaintiff's life and health insurance premiums as was required under an employee benefit plan, and to prevent the him from attaining a vested "service pension," a benefit to which he would have been entitled if he remained an employee for two more years.⁸¹ Similar to the plaintiff in *Zipf*,⁸² the plaintiff in *Kross* alleged that his former employer violated ERISA by unlawfully interfering with his right to obtain certain benefits owed to him under the plan.⁸³ The plaintiff did not avail himself of any internal remedies available to him under the plan, and the defendant company relied upon this fact in moving for summary judgment.⁸⁴ The defendant argued that the plaintiff would not be entitled to relief under ERISA because he failed to exhaust all internal remedies before bringing suit in federal court.⁸⁵ The district court agreed with the defendant company about the application of the exhaustion doctrine and granted its motion for summary judgment.⁸⁶

On appeal, the court upheld the district court's grant of summary judgment for

77. *Id.* at 893.

78. *See, e.g.,* *Lindemann v. Mobil Oil Corp.*, 79 F.3d 647, 649-50 (7th Cir. 1996); *Mason v. Cont'l Grp., Inc.*, 763 F.2d 1219, 1226-27 (11th Cir. 1985); *Kross v. W. Elec. Co.*, 701 F.2d 1238, 1245 (7th Cir. 1983).

79. 701 F.2d 1238 (7th Cir. 1983).

80. *Id.* at 1244 (affirming the district court's decision requiring application of the exhaustion doctrine).

81. *Id.* at 1239.

82. *See supra* note 54 and accompanying text.

83. *Kross*, 701 F.2d at 1239.

84. *Id.*

85. *Id.* at 1240.

86. *Id.* at 1241.

the company, concluding that the exhaustion doctrine did apply to the plaintiff's claim.⁸⁷ Similar to the *Zipf* case, the court in *Kross* found that the plaintiff's interference claim invoked a purely statutory issue, and was wholly independent of any contractual rights under the plan.⁸⁸ The *Kross* court, however, held that exhaustion was required even though the plaintiff's claim arose from a right protected by the statute.⁸⁹ In arriving at its decision that the doctrine was applicable in this case, the court looked to established precedent and Congressional intent to support its reasoning.⁹⁰ The court observed that Congress required "covered plans to provide administrative remedies for aggrieved claimants . . . to see that those remedies are regularly used" and that "trustees of covered benefit plans are granted broad fiduciary rights and responsibilities under ERISA . . . and implementation of the exhaustion requirement will enhance their ability to expertly and efficiently manage their funds [without] premature judicial intervention in their decision-making processes."⁹¹ In finding that federal policy, Congressional intent, and judicial precedent supported the application of the exhaustion doctrine to cases alleging statutory violations, the court rejected the plaintiff's arguments that the federal courts were the only proper venue to interpret statutory violations of ERISA, holding that his arguments were "insufficient to override the well-established policy, and supporting case law, favoring exhaustion of administrative remedies prior to bringing an ERISA-based lawsuit in federal court."⁹²

Kross is a prime example of the line of reasoning representative of the minority of circuits who have held that the exhaustion doctrine applies to claims involving statutory guarantees under ERISA, and highlights the distinctions upon which the majority and minority circuits disagree. The courts in both *Zipf* and *Kross* acknowledged that the claims presented by the respective plaintiffs involved wholly statutory issues, and arose independently of any contractual rights provided by the benefit plans. The court in *Zipf*, however, distinguished ERISA-based claims from those arising under the benefit plan, by applying the framework established in *Barrowclough*, and noted that special consideration must be given to statutory claims, whereas contract claims were subject to the exhaustion doctrine. In determining whether or not the doctrine applied to purely statute-based claims, both courts looked to federal policy and legislative intent to decide the doctrine's applicability to those types of cases, but the courts arrived at markedly different conclusions. The *Zipf* Court recognized the doctrine's aims to ensure that the administrative remedies mandated by Congress are utilized to allow expert plan fiduciaries the opportunity to resolve issues arising under benefit plans, and to increase the efficiency of claims settlement, but found that these objectives were

87. *Id.* at 1245 (holding that "the district court did not abuse its discretion when imposing the exhaustion doctrine in this case and denying the plaintiff's claim that [the defendant] improperly interfered with the vesting of his service pension.").

88. *Id.* at 1244 (holding that the plaintiff's "civil action against [the defendant] falls within the purview of § 502(a)(3) because it is based on alleged violations of the provisions of [ERISA], rather than violations of the terms of a particular benefit plan.").

89. *Id.* (holding that "federal policy expressed in case law, encouraging private resolution of ERISA-related disputes, mandates the application of the exhaustion doctrine in this case.").

90. *Id.*

91. *Id.* at 1245 (quoting *Amato v. Bernard*, 618 F.2d 559, 567-68 (9th Cir. 1980)).

92. *Id.*

not applicable to purely statutory claims, and held that that the application of the doctrine to such claims would go against Congress' intention that alleged violations of protections provided under the statute be litigated in the federal courts.

The *Kross* Court, in arriving at the opposite conclusion, found that the legislative history of the ERISA statute showed Congress' intent to mandate exhaustion of internal remedies in order to ensure that the administrative procedures mandated by the statute were utilized, to increase efficiency in the claims process, and to preserve judicial economy by preventing the filing of frivolous lawsuits. The *Kross* Court thus concluded that the aims of the exhaustion doctrine were in alignment with those of Congress, and that the prevailing contrary arguments in *Zipf* were not sufficient to justify application of the doctrine to cases involving alleged statutory violations under ERISA.

Understanding the line of reasoning invoked by the courts of the majority and the minority circuits is important to establishing the major controversies surrounding the application of the doctrine, and for analyzing how both sides arrive at their conclusions. Neither the First Circuit, nor the Supreme Court have directly addressed the issue, and a comprehensive overview of the majority and minority views on the application of the doctrine will provide the framework through which a prospective inquiry may be made into how the First Circuit or the Supreme Court may dispose of the issue in light of the recent *Stephens* decision.

III. PROSPECTIVE OUTLOOK: LOOKING FORWARD FROM *STEPHENS*

A. *The Exhaustion Doctrine in the First Circuit*

The First Circuit has yet to address the precise issue of whether the application of the exhaustion doctrine is appropriate in claims arising under the ERISA statute.⁹³ Complicating matters further, the district courts within the First Circuit are split, with some district courts holding that the doctrine does apply to statute-based ERISA claims,⁹⁴ and others following the majority of the circuits and holding that the exhaustion of internal remedies is not a prerequisite to bringing forth an ERISA claim in the federal court system.⁹⁵

Although the First Circuit has not addressed specifically the application of the

93. *Edes v. Verizon Commc'ns, Inc.*, 288 F. Supp. 2d 55, 60 (D. Mass. 2003).

94. *See, e.g., Santana v. Deluxe Corp.*, 12 F. Supp. 2d 162, 174 (D. Mass. 1998) (concluding that "[t]his Court agrees with the Seventh and Eleventh Circuits that strong policy reasons—most prominently to render meaningful the Congressional mandate that all ERISA plans include an appeal process—compel plaintiffs to exhaust all benefit denial claims, regardless of their nature."); *King v. James River-Pepperell, Inc.*, 592 F. Supp. 54, 55-56 (D. Mass. 1984).

95. *See, e.g., Treadwell v. John Hancock Mut. Life Ins. Co.*, 666 F. Supp. 278, 284 (D. Mass. 1987) (holding that "this court agrees with the Ninth and Third Circuits in *Amaro* and *Zipf*, that there is a sensible distinction between plan-based and statute-based claims. A claim for benefits is a matter of contractual interpretation of a specific pension plan. Such a matter can be fruitfully left to a trustee or arbitrator charged with administration of that specific plan. A claim under . . . ERISA, on the other hand, seeks to vindicate a right afforded employees by Congress. Evaluation of such a claim will be a matter of statutory interpretation and application, and this is a matter most appropriate for judicial determination."); *Morales-Cotte v. Cooperativa de Ahorro y Credito Yabucoeña*, 73 F. Supp. 2d 153, 160 (D.P.R. 1999); *Alexander v. Fujitsu Bus. Commc'n. Sys. Inc.*, 818 F. Supp. 462, 471 (D.N.H. 1993).

exhaustion doctrine to statutory ERISA claims, it has addressed the applicability of the doctrine in other contexts that may reveal which factors the Circuit would consider when addressing the issue.⁹⁶ In *Strategic Energy, LLC v. Western Massachusetts Electric Co.*,⁹⁷ the court discussed the factors that the First Circuit has considered in determining when it is appropriate to apply the exhaustion doctrine to claims arising under federal law, noting that the Circuit may consider:

[W]hether the issue under review is a pure matter of law versus a factual matter where the agency's specialized expertise will be helpful in resolving the dispute; whether "the agency is empowered to grant meaningful redress;" whether "the pursuit of the administrative remedies would be futile or inadequate," and whether requiring exhaustion will prevent parties "from weakening the position of the agency by flouting its processes."⁹⁸

In applying the factors outlined in *Strategic Energy*, it is likely that the First Circuit—if faced with the question of whether the exhaustion doctrine would apply to statute-based ERISA claims—would join the majority of the circuits in holding that the doctrine does not apply to such claims, primarily because adjudicating and granting relief for federal causes of action is within the sole province of the federal courts.

In addressing the first two factors mentioned above, analyzing whether the "issue under review is a pure matter of law versus a factual matter where the agency's specialized expertise will be helpful in resolving the dispute,"⁹⁹ and "whether 'the agency is empowered to grant meaningful redress,'"¹⁰⁰ it is fairly certain that the First Circuit would find that these factors weigh against application of the doctrine. Claims that arise under ERISA and not based in the terms of the plan are purely issues of law that are best decided by the federal courts.¹⁰¹

The second factor to be considered by the Circuit—whether the plan fiduciaries have been granted the power to grant meaningful relief—clearly mitigates against the application of the doctrine to statute-based ERISA claims. In enacting ERISA, Congress mandated that covered plans provide certain minimum internal procedural safeguards.¹⁰² Congress simultaneously created a federal cause

96. See *Ezratty v. Puerto Rico*, 648 F.2d 770, 774-75 (1st Cir. 1981) (discussing the applicability of the exhaustion doctrine to a claim arising under the Education for All Handicapped Children Act); *Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, 77-78 (D.P.R. 1997) (discussing the applicability of the exhaustion doctrine to a naval civilian employee's wrongful termination claim).

97. 529 F. Supp. 2d 226, 233-34 (D. Mass. 2008).

98. *Strategic Energy, LLC*, 529 F. Supp. at 233 (citations omitted); see also *Coles Express v. New England Teamsters & Trucking Indus. Pension Fund*, 702 F. Supp. 355, 363 (D. Me. 1988) (stating that "[a]lthough the First Circuit has yet to rule on whether arbitration is mandatory in these circumstances under [the applicable statute], *Ezratty* does indicate, at least in the absence of a legislative mandate of exhaustion of administrative remedies, that a balancing test is to be employed.").

99. *Strategic Energy, LLC*, 529 F. Supp. 2d at 233.

100. *Id.* (quoting *Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, 77 (1st Cir. 1997)).

101. See *Zipf v. Amer. Tel. and Tel. Co.*, 799 F.2d 889, 893 (holding that "a [statute-based ERISA claim] asserts a statutory right which plan fiduciaries have no expertise in interpreting," and that "statutory interpretation is not only the obligation of the courts, it is a matter within their peculiar expertise.").

102. See 29 U.S.C. § 1133 (2012) (declaring that all employee benefit plans shall "provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been

of action under which a plaintiff alleging a violation of his or her rights under the statute may seek and obtain equitable relief,¹⁰³ or money damages.¹⁰⁴ Thus, plan administrators may grant or deny benefits in accordance with a plan contract or a general scheme of plan administration. They do not, however, have the authority to grant relief created by a federal statute.

The final factor the First Circuit would likely balance in determining whether the exhaustion doctrine should be applied to statute-based ERISA claims, is “whether requiring exhaustion will prevent parties ‘from weakening the position of the agency by flouting its processes.’”¹⁰⁵ This factor, too, cuts in favor of a finding that the doctrine does not apply in statute-based ERISA claims. In considering whether exhaustion applies, the First Circuit would likely consider the impact exhaustion would have on the agency’s (here the plan fiduciaries’) ability to maintain the validity of its policies, without having federal courts override them and impose their own.

Not requiring exhaustion for statute-based ERISA claims would not lead to the “flouting” of the plan fiduciaries’ policies, as such claims arise under the statute, and do not necessarily require an interpretation of the terms of a given benefit plan. In acknowledging the difference between statutory claims under ERISA and contractual claims under the terms of the plan, and requiring exhaustion for the latter and not the former, the plan beneficiaries maintain the liberty to control plan administration within the parameters of the applicable laws. Further, requiring exhaustion for plan-based claims allows the plan fiduciaries to maintain the authority to develop policies, hear appeals and render decisions as to the grant or denial of benefits. After a plaintiff has exhausted all internal remedies in pursuing a plan-based claim, courts have applied the heavily deferential “arbitrary and capricious” standard in reviewing decisions made by plan administrators.¹⁰⁶

In conclusion, when applying the balancing test established by the First Circuit to determine whether the application of the exhaustion doctrine to statutory claims is appropriate in the absence of an explicit Congressional mandate, the factors considered weigh heavily in favor of not requiring exhaustion for three central reasons. First, because of the inherently legal nature of statute-based claims, federal courts are the proper venue to hear lawsuits, as the knowledge and expertise of plan administrators offer little in the way of interpreting federal statutes. Secondly, plan administrators work within the framework of private contracts and are wholly unable to provide the type and quality of relief in response to infringement of rights guaranteed by a federal statute. And finally, providing claimants with direct access to federal courts does not impede upon the broad

denied . . . and afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.”).

103. *Id.* § 1132(a)(3) (granting the possibility of injunction relief for ERISA provisions).

104. *Id.* § 1132(c)(1).

105. *Strategic Energy, LLC*, 529 F. Supp. 2d at 233 (quoting *Ezratty v. Puerto Rico*, 648 F.2d 770, 774 (1st Cir. 1981)).

106. *See, e.g., Stuart v. Metro. Life Ins. Co.*, 664 F. Supp. 619, 622 (D. Me. 1987) (holding that “[a]n action brought . . . for benefits due under a pension plan requires the court to review the plan administrator’s determination under the ‘arbitrary and capricious’ standard. This standard has been applied by every federal circuit court of appeals.”).

authority Congress granted to plan fiduciaries to administer their pension plans and implement their policies.

Whereas it is likely that the First Circuit would apply a balancing test when determining if the exhaustion doctrine applies to statute-based ERISA claims, the Supreme Court would probably look to precedent to drive its analysis.

B. *The Exhaustion Doctrine in the Supreme Court*

The Supreme Court, like the First Circuit, has not yet specifically addressed the issue of the exhaustion doctrine's application in statute-based ERISA claims. In *Heimeshoff v. Hartford Life & Accident Insurance Co.*,¹⁰⁷ however, the Court acknowledged in dicta that the exhaustion doctrine applies to claims whereby a plaintiff seeks to obtain benefits under an ERISA-covered plan.¹⁰⁸ However, in *Larue v. DeWolff, Boberg & Associates, Inc.*,¹⁰⁹ the Court suggested that plaintiffs could circumvent the administrative exhaustion requirement if they asserted statutory, rather than plan-based claims, but admitted that these questions are not yet settled.¹¹⁰ This distinction between plan-based claims and those based in federal statute recognized by the Court may help to predict how the precise issue would be addressed by the land's highest tribunal.

In *Barrentine v. Arkansas-Best Freight System, Inc.*, the Supreme Court faced a similar question.¹¹¹ At issue in *Barrentine* was whether a plaintiff could bring a federal court claim under the Fair Labor Standards Act¹¹² after having had a similar claim rejected by a joint grievance committee in accordance with the procedures established by his collective bargaining agreement.¹¹³ In determining whether the plaintiff had a right to have his statutory claim heard in federal court, the Court acknowledged that the issue invoked competing federal interests.¹¹⁴ The first was the interest in promoting "negotiation of the terms of employment through the collective-bargaining process" and the second, "reflected in statutes governing relationships between employers and their individual employees, guarantees employees specific substantive rights."¹¹⁵ The Court noted that although there was a strong federal interest in efficient management of work-related claims in arbitration, in enacting the Fair Labor Standards Act "Congress intended . . . to

107. 134 S. Ct. 604 (2013).

108. *Id.* at 609 (noting that "[c]ourts have generally required plan participants to exhaust the plan's administrative remedies before filing suit.").

109. 552 U.S. 248 (2008).

110. *Id.* at 258-9 (Roberts, J., concurring) (holding that "[a]llowing a[n] action to [collect benefits under the plan] to be recast as one [alleging breach of fiduciary duty] might permit plaintiffs to circumvent safeguards for plan administrators that have developed," and that "[a]mong these safeguards is the requirement, recognized by almost all the Courts of Appeals that a participant exhaust the administrative remedies").

111. 450 U.S. 728 (1981).

112. Fair Labor Standards Act of 1938, ch. 676, 52 Stat. 1060 (codified as amended in scattered sections of 29 U.S.C.).

113. 450 U.S. at 730-31.

114. *Id.* at 734-735.

115. *Id.* at 734 (stating further that "[a] tension arises . . . when the parties to a collective-bargaining agreement make an employee's entitlement to substantive statutory rights subject to contractual dispute-resolution procedures.").

achieve a uniform national policy of guaranteeing compensation for all work or employment,” and that “[a]ny custom or contract falling short of that basic policy, like an agreement to pay less than the minimum wage requirements, cannot be used to deprive employees of their statutory rights.”¹¹⁶ The Court thus held that preventing the plaintiff from bringing a claim asserting statutory rights on the basis of an arbitration decision mandated by a collective bargaining agreement would infringe upon Congress’ intent to create substantive employee rights, noting that “[b]ecause the arbitrator is required to effectuate the intent of the parties, rather than enforce the statute, he may issue a ruling that is inimical to the public policies underlying [The Fair Labor Standards Act].”¹¹⁷ The Court further noted that “not only are arbitral procedures less protective of individual statutory rights than are judicial procedures, but arbitrators very often are powerless to grant aggrieved employees as broad a range of relief.”¹¹⁸ The Court thus held that the plaintiff could bring a federal suit under the Fair Labor Standards Act notwithstanding a previous submission of similar claims to arbitration pursuant to a collective bargaining agreement, noting that because “the [statutory rights] petitioners seek to assert . . . are independent of the collective-bargaining process . . . [t]hey are not waivable.”¹¹⁹

The issue of the application of the exhaustion doctrine to statute-based claims in the context of ERISA involves some of the same factors—institutional competence, Congressional intent, and the distinction between contractual and substantive rights—that were discussed by the court in *Barrentine*. Using *Barrentine* as a model, the Supreme Court is likely to hold that because the rights asserted by plaintiffs alleging substantive claims are based in a federal statute, and because the federal court system is entrusted with the duty to interpret statutes and grant appropriate relief, requiring the exhaustion of internal remedies would alter the benefits Congress intended to convey to plan beneficiaries, and strip the federal courts of jurisdiction to hear cases arising under federal statutes.

IV. CONCLUSION

With the decision in *Stephens*, the D.C. Circuit became the eighth circuit to directly address the issue of whether the exhaustion doctrine may be applied in cases invoking statute-based ERISA claims, and the sixth of which to hold that the doctrine does not apply to such claims. Apart from tipping the scales further in favor of the majority view, the *Stephens* decision provides an artful and thorough analysis of the various issues pertinent to the controversy regarding the applicability of the doctrine to cases raising statutory claims. In relying upon precedent from the majority circuits, the *Stephens* court further affirmed the proposition that the dual aims of providing aggrieved plan participants access to federal courts, and ensuring that plan fiduciaries implement and maintain internal remedial procedures, are best served by not applying the exhaustion doctrine to

116. *Id.* at 740 (quoting *Tenn. Coal, Iron & R.R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 602-603 (1944)).

117. *Id.* at 744.

118. *Id.* at 744-745.

119. *Id.* at 745.

statutory claims under ERISA, but rather by providing expert plan fiduciaries great control over the administration of the plan and its claim procedures, while simultaneously allowing the federal courts to adjudicate claims based in federal statute and create a substantive body of federal law upon which plan administrators may rely. In finding that these dual aims are fulfilled more effectively by not requiring exhaustion of internal administrative remedies for statute-based claims, the *Stephens* court further diminished the viability of the argument proffered by the minority of the circuits that exhaustion is required for all ERISA claims to ensure that the internal remedies mandated by Congress are utilized and to prevent the filing of meritless claims. *Stephens* thus represents the latest in a line of cases that have held Congressional intent is better served—and institutional competency greater preserved—by not requiring exhaustion in statute-based ERISA claims.